purchase price of the stock. The defendant pleaded his discharge in bankruptcy as a defense. *Held,* that such a claim was not provable under § 63 (1) of the Bankruptcy Act, and hence was not discharged under § 17. *Phenix National Bank* v. *Waterbury et al.* (1910), — N. Y. —, 90 N. E. 435, 23 Am. B. R. 250.

§ 63, supra, provides that "Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not," etc. In *Ames* v. *Moir,* 138 U. S. 306, 11 Sup. Ct. 311, 34 L. Ed. 951, it was held that an agreement of this kind did not create a "debt absolutely owing" within the meaning of the Bankruptcy Act, and this decision clearly controlled that in the principal case. While such a claim may not be a technical "debt," it seems difficult to give a reasonable meaning to the phrase "whether then payable or not," unless it be held to include such demands. It is clear that such a debt will be owing absolutely on the day fixed in the contract no matter whether the defendant elects to purchase sooner or not, and if, as seems to be conceded, there may be a debt absolutely owing but not yet payable, the plaintiff's claim should be considered such a debt.

BANKRUPTCY—PARTNERSHIP—INDIVIDUAL ESTATE OF A PARTNER.—A partnership had been adjudged bankrupt, without proceedings being instituted against the individual members, one of whom possessed a valuable equity of redemption in a real estate mortgage upon which foreclosure proceedings were threatened. The trustee applied to the Bankruptcy Court to compel a transfer of the equity of redemption by the partner to the trustee. Bankruptcy Act 1898, c. 541, § 5, 30 Stat. 547 (U. S. Comp. St. 1901, p. 3424). *Held,* that the transfer could be compelled. *In re Lattimer et al.* (1909), — D. C., E. D. Pa. —, 174 Fed. 824.

The power of a bankruptcy court over the property of individual members of a firm which has been adjudged bankrupt is not clearly settled. The commercial idea of a partnership—i. e., a distinct entity separate and apart from the members who compose it—has gained much support among the text-writers, and has found its way into the present Bankruptcy Act. COLLIER, BANKRUPTCY, Ed. 7, p. 115. While it is clear that § 5, supra, permits an adjudication against the partnership without proceeding against the members individually, the question still remains as to the rights of a trustee against the individual property of partners not adjudged bankrupt. It was said, by way of dicta, in *Re Meyer,* 98 Fed. 976, 39 C. C. A. 368, that a partnership adjudication draws to it the estate of the individual members. This view, however, was distinctly repudiated in the *Bertenshaw Case,* 157 Fed. 363, 85 C. C. A. 61, 17 L. R. A. (N. S.) 886. *Re Stokes,* 106 Fed. 312, a previous case in the same circuit as the principal case, had followed the dicta in *Re Meyer,* supra, and the question was considered by the court as settled in that circuit until passed upon by the Supreme Court. The converse of the proposition has also received attention. In *Mills* v. *Fisher & Co.,* 159 Fed. 897, 87 C. C. A. 77, 20 Am. B. R. 237, it was held that where some but not

all of the partners had been adjudged bankrupt, and there had been no proceeding filed against the firm, the firm property could not be administered in bankruptcy without the consent of the solvent partner, who had the right to wind up the firm, paying over the share of the bankrupts to their trustees. This seems reasonably clear, however, from § 5(h).

BANKS AND BANKING—CHECKS ON TRUST FUNDS—DEPOSIT TO PERSONAL ACCOUNT OF TRUSTEE—LIABILITY OF BANK.—A corporation of which C. W. Van Voorhis was treasurer, opened an account with a certain bank under an arrangement by which the checks drawn upon such account were to be signed by C. W. Van Voorhis, as treasurer of the plaintiff corporation. The treasurer made three checks amounting to some fifty-nine thousand dollars, payable to the order of "W. M. Greenwood, or C. W. Van Voorhis," and signed in his corporate capacity. Another bank in which the treasurer kept his individual account placed these checks, endorsed by the treasurer, to his personal credit. The checks were collected and paid out on personal checks of the treasurer for his individual debts. *Held,* (SCOTT, J., and MCLAUGHLIN, J., dissenting), the face of the checks was sufficient notice to put the bank upon inquiry and it was, therefore, liable for misappropriation. *Havana Central R. R. Co.* v. *Knickerbocker Trust Co.* (1909), 119 N. Y. Supp. 1035.

It was conceded in this case that the form of the checks was notice that the funds were the property of the corporation. If a bank, in payment of an obligation, receives a check with such notice and does not make inquiry, it is liable to the owner of the check if there was no authority for such transfer. *Rochester, etc. Co.,* v. *Paviour,* 164 N. Y. 281, 52 L. R. A. 790; *Ward* v. *City Trust Co.,* 192 N. Y. 61. Whether a bank is liable to the same degree of care where it merely deposits checks representing trust funds to the individual account of a trustee, is not so well settled. One line of cases holds, that where there is no separate trust account, the fact that a trustee deposits a check payable to him as trustee to his personal account, does not give the bank notice of any misappropriation. *Batchelder* v. *Bank,* 188 Mass. 25; *Safe Deposit & Trust Co.* v. *Diamond Nat. Bank.,* 194 Pa. 334; *Coelman* v. *Buck etc. Bank,* 2 Ch. Div, 243, 254; *Woodbridge* v. *First Nat. Bank,* 61 N. Y. Supp. 258, 45 App. Div. 166. In the case of *Gate City etc. Assn.* v. *Nat. Bank of Commerce,* 126 Mo. 82, the financial secretary of the association endorsed checks payable to the association and the bank deposited them to his personal account. The court held, that the bank received the checks in good faith and due course of business and was not liable for his misappropriation of the money paid out on his individual checks. Mr. ZANE in his BANKS AND BANKING, page 220, note 18, holds that this case is wrong, and the cases of *Duckett* v. *Mechanic's Bank,* 86 Md. 400, 410, and *Farmers' Loan Co.* v. *Fidelity Trust Co.,* 86 Fed. 541, tend to sustain his position, that the fact that a trustee desires to place such checks to a personal account is notice of fraud, that the bank takes the first step toward misappropriation, and is liable. It is the duty of the bank to honor checks of its depositors though it knows such deposit includes funds held as trustee. *Am. Trust etc. Co.* v. *Boone,* 102 Ga. 202; *Int. Nat. Bank* v. *Claxton,* 97 Tex. 569, 65 L. R. A.